IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 23/1998

Shri Subhas Pundalic Pernim Usgaoncar,
through his Power of Attorney
Shri Digambar Dhond, son of Shanker,
Both r/o. H.No. VPC/342, Collem, Goa. ..... Appellant.

V/s.

1. Shri Saulo Guno Chari, (since deceased)
represented by his heirs :

1(a) Nayan Subhas Mestri Chari

1(b) Subhas Mestri Chari,

Both residents of c/o. Pravin Naik,
Near Menezes Factory Durgabhat, Ponda,

1(c) Gurudas Saulo Chari,

1(d) Miss Sumati Saulo Chari,

1(e) Aman Saulo Chari,

1(f) Sushanti Saulo Chari,

2. Shantabai Saulo Chari,
widow of Saulo G. Chari,
From (c) to 2 all residents of House
NO.VPC/341 Collem, Goa.
Through Power of Attorney
Nagesh Kamat, Collem. ..... Respondents.

Mr. V. Rodrigues, Advocate for the appellant.

Mr. R. G. Ramani, Advocate for the respondents.

CORAM : P.V. KAKADE, J.

DATE : 27th November, 2006.

ORAL JUDGMENT :

This is an appeal preferred by the unsuccessful plaintiff against the Judgment and Order passed by the District Judge, South Goa, Margao dated 7th February, 1998 allowing the appeal and setting aside the Judgment and Decree of the trial Court dated 29.4.1994, decreeing the suit and directing the defendants to hand over vacant possession of the property involved in the dispute.

2. I have heard both sides. In the course of arguments, it was pointed out that the learned Trial Judge, in fact, in the course of the trial had raised an issue to the effect that whether the defendants proved that by order of the Joint Mamlatdar of Sanguem dated 25.4.1981 he was declared as *mundkar* in occupation of 300 sq. metres of land with hut in the said property. This was on the basis of pleadings of the parties.

3. However, in the course of trial, when the evidence of both the parties was over and at the time of delivering the Judgment, the learned trial Judge thought it fit to delete the issue and recast the issue to the

effect that whether the plaintiff had proved that he was owner of the suit structure and had permitted the defendants to occupy the suit structure and hence, while answering the issues in favour of the plaintiff, the suit came to be decreed.

4. Subsequently, when the appeal was preferred before the District Judge, the plaint was amended and it was pointed out that the registration of the concerned party was already made as *mundkar* and on that basis, the learned District Judge thought it fit not to raise the relevant issue regarding mundkarship and adjudicated the appeal on the basis of the merits involved before him, allowing the appeal.

5. Hence, the present appeal came to be filed.

In the course of arguments, this position is now pointed out by the learned Counsel and, therefore, in my considered view, the trial Court appears to have erred in not referring the issue regarding status of the defendants as *mundkar* to the concerned authority i.e. the Mamlatdar under the provisions of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975. It is needless to mention that once the plea was raised and it was sought to be substantiated by relevant evidence on record, it was the duty of the trial Court to raise the issue and refer it to the

concerned authority However, instead of doing the same, the trial Court thought it fit to delete the issue which was originally raised in this regard which must entail referring back the entire matter to the Courts below. Hence, the Judgment and Order passed by the District Judge, South Goa, Margao dated 7.2.1998 is quashed and set aside. Similarly, the Judgment and Order passed by the trial Court in Regular Civil Suit No. 43/89 dated 29th April, 1994 decreeing the suit is also set aside. The proceeding is remanded to the trial Court with direction that it shall raise an appropriate issue on the basis of the alleged mundkarial rights of the defendants and refer it to the concerned authority under the said Act and decide the matter afresh on the basis of the findings which would be recorded and and returned by him, in the said proceeding. With this direction, the appeal stands disposed of with no order as to costs.

Pending the adjudication by the Mamlatdar in this regard, the parties shall maintain status quo as on today with regard to the suit property. At the request of the parties, it is, hereby, directed that the Mamlatdar shall adjudicate and dispose of the said matter, after reference from the trial Court, within a period of six months from the date of receipt of writ of the Court.

P.V. KAKADE, J.

ssm.